

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN**

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**RICKEY VIVRETTE,**

**Petitioner,**

**v.**

**Case No. 10-C-415**

**RICK RAEMISCH,  
Secretary of the Wisconsin  
Department of Corrections,**

**Respondent.**

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**SUPPLEMENTAL DECISION AND ORDER**

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Pro se Petitioner Rickey Vivrette (“Vivrette”), confined in the Manitowoc County Jail, filed a petition and affidavit for leave to proceed *in forma pauperis* on his petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. After the denial of Vivrette’s petition for leave to proceed *in forma pauperis* and Vivrette’s payment of the filing fee, the Court issued a Decision and Order on June 23, 2010, dismissing the petition upon preliminary review pursuant to Rule 4 of the Rules Governing Section 2254 Cases in United States District Courts, because Vivrette has not exhausted his state remedies. The dismissal for failure to exhaust remedies was not a ruling on the merits of Vivrette’s petition.

Rule 11 of the Rules Governing Rules Governing Section 2254 Cases in United States District Courts requires that when a Court issues a final order adverse to a Petitioner

it issue or deny a certificate of appealability (“COA”). Thus, this Court is issuing this Supplemental Decision and Order.

A district court may issue a COA “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). That requires, in turn, that the court’s ruling be “debatable” among “jurists of reason.” See *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). “When the district court denies a habeas petition on procedural grounds without reaching the prisoner’s underlying constitutional claim, a COA should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Id.* The instant case does not satisfy that standard. Therefore, this Court declines to issue a COA.

**NOW, THEREFORE, BASED ON THE FOREGOING, IT IS HEREBY  
ORDERED THAT:**

The Court declines to issue a certificate of appealability.

Dated at Milwaukee, Wisconsin this 1st day of July, 2010.

**BY THE COURT**

*s/ Rudolph T. Randa*

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**Hon. Rudolph T. Randa  
U.S. District Judge**